



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

FEB 14 2017

OFFICE OF
COMPLIANCE AND ENFORCEMENT

Reply To: OCE-101

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Ms. Tania Reynolds
EHS Manager
Pace International, LLC
5661 Branch Road
Wapato, Washington 98951

Re: **NOTICE OF VIOLATION**
Pace International LLC
EPA ID No. WAD 98848 8052

Dear Ms. Reynolds:

This Notice of Violation (NOV) is to inform Pace International LLC of violations of the Resource Conservation and Recovery Act, as amended (RCRA). These violations were identified as a result of an inspection performed by the Environmental Protection Agency (EPA) on September 13, 2016, at the Pace International, LLC facility located at 5661 Branch Road in Wapato, Washington (hereinafter "Pace"). The inspection was performed pursuant to the EPA's inspection authority under Section 3007 of RCRA, 42 U.S.C. § 6927.

From the observations made during the inspection, the following RCRA violations were identified at the facility:

Violation 1: Failure to Determine if a Solid Waste is a Hazardous Waste

40 C.F.R. §262.11 requires, among other things, that a person who generates a solid waste must determine if that solid waste is a hazardous waste. This determination must be performed at the point at which the solid waste is first generated. For a surface impoundment in which sludge forms, the point of generation is the moment that sludge first deposits on the bottom of the impoundment. Please see the enclosed EPA memorandum dated March 8, 1991.

At the time of the September 13, 2016 inspection, it was determined that Pace routinely manages waste water in three evaporation ponds in the northwest corner of the facility. As a result of managing that waste water, sludge (a solid waste) routinely forms at the bottom of the impoundment, which Pace periodically removes. Pace determines if that solid waste is a hazardous waste once the sludge is removed, rather than when it first deposits on the bottom of the impoundment.

Pace violated 40 C.F.R. §262.11 by failing to determine, at the point it is generated, if the solid waste sludge being deposited in the three surface impoundments is a hazardous waste.

Violation 2: Failure to Properly Manage Hazardous Waste

RCRA Section 3005(a) requires, among other things, that the owner and operator of a hazardous waste management unit must have a permit or interim status for the treatment, storage, or disposal of any hazardous waste during the active life of the unit. Pace does not have a permit or interim status for the treatment, storage, or disposal of hazardous waste.

40 C.F.R. 262.34(a)(2) provides that certain generators may accumulate hazardous waste at a facility without a permit or interim status, if, among other things, the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container.

At the time of the September 13, 2016 inspection, it was determined that, in the less than 90 day accumulation area, the contents of two 5-gallon containers were labeled as awaiting analysis. One container was labeled as being sampled on 8/11/2016, while the other container was not labeled with any date. Neither container was labeled with the date upon which accumulation of the contained waste began. On or about 9/14/2016, Pace informed EPA that the contents of both containers were hazardous wastes, therefore hazardous wastes at the point and date of generation.

Pace, the owner and operator of a hazardous waste management unit, violated RCRA Section 3005(a) by storing hazardous waste without a permit or interim status.

Required Action

The above violations may subject Pace to enforcement action under Section 3008 of RCRA, including the assessment of civil penalties. Within 20 days of receipt of this NOV, the EPA requests that you submit a written response and/or photographs that identify actions you have taken or will take to correct the existing violation.

Please send all material submitted in response to this NOV to Kevin Schanilec by email at schanilec.kevin@epa.gov, or:

Mr. Kevin Schanilec
U.S. Environmental Protection Agency
Air-RCRA Compliance Unit, OCE-101
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

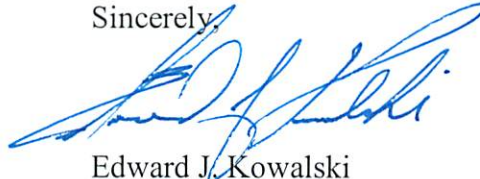
EPA Reservation of Rights

Notwithstanding this NOV or your response, EPA reserves the right to take any action pursuant to RCRA or any other applicable legal authority. Your response to this NOV does not constitute compliance with RCRA.

Nothing in this NOV or your response will affect duties, obligations or responsibilities with respect to Pace under local, state or federal law or regulation.

Thank you for your prompt attention to this important matter. If you have questions regarding this NOV, please contact Kevin Schanilec of my staff at 206-553-1061 or schanilec.kevin@epa.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Edward J. Kowalski", is written over the word "Sincerely,".

Edward J. Kowalski
Director

Enclosure

9484.1991(01)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

MAR 8 1991

MEMORANDUM

SUBJECT: Regulation of Surface Impoundments that Exhibit the
Toxicity Characteristics (TC)

FROM: Sylvia K. Lowrance, Director
Office of Solid Waste

TO: Kristine A. M. Leopold
Assistant Regional Counsel (6C-WT)

In your November 7, 1990 memorandum to our office, you conveyed the concerns of Ms. Paula Floeck of ENSR Consulting and Engineering, Houston, Texas, regarding the regulation of sludges within surface impoundments that may have the potential to become newly regulated units as a result of the Toxicity Characteristics (TC) rule. This memorandum responds to Ms. Floeck's and your concerns.

In Scenario one (1) of Ms. Floeck letter (see Attachment) she asked, if it were "true that the sludge becomes regulatory concern (sic) at the point it is intended to be discarded, that is, when the impoundment is cleaned or closed?" Before answering that question I would first like to address some specifics in her Stormwater Impoundment Scenario (#1). For example, Ms. Floeck stated that in determining whether the sludge (in the impoundment) would render the impoundment a hazardous waste management unit, we must first determine whether the sludge at this point is classified as a waste. According to 40 CFR 261.2, she states, a solid waste is defined as any discarded material that is:

abandoned;
recycled; or
considered inherently waste-like

She concludes that the sediment (sludge) within the impoundment does not meet any of these criteria and therefore should not be

defined as a solid waste.

The Agency disagrees with her interpretation of the above prescribed federal regulation with respect to sludge within an impoundment. The Agency interprets the federal definition of solid waste to apply to the sludge generated within an impoundment (unit), and believes that the unit would become regulated for these following reasons:

1. The RCRA regulation define a solid waste as any discarded material. This includes materials that are abandoned by being "accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated." (Emphasis added; see §261.2 (b)(3))

2. Our past interpretations include sludge as a solid waste.

"Any pollution abatement technique such as the land treatment, disposal, or storage of a wastewater will invariably generate a sludge. The mechanisms for sludge formation involve either precipitation, adsorption, or accumulation of biomass. These units would be subject to regulation ...if the sludges exhibit a characteristic..."
(See enclosed July 17, 1985 memo from Skinner to Scarbrough).

3. The Agency has always maintained that sludges are generated at the moment of their deposition at the bottom of the unit ("point of generation"). Note that deposition is defined as a condition where there has been at least a temporary cessation of lateral particle movement (See 55 FR 46380, November 2, 1990).

Therefore, in response to Ms. Floeck's question, the sludge does become of regulatory concern at the point it is intended to be discarded. However, "discarded" does not mean only when the impoundment is cleaned or closed. If sludge in an impoundment, which is considered to be a solid waste under 261.2, exhibits the TC, then the sludge and unit would become subject to Subtitle C requirements. Under the federal regulations accumulation and storage of TC-hazardous waste in a unit subjects that unit to the hazardous waste program. Note, however, that the solid waste determination in an authorized State is a State call. If State law is more stringent or broader in scope than federal RCRA regulations, then compliance with those regulations would also be

required.

In addition, on September 27, 1990 (55 FR 39409) an Agency clarification notice was published regarding a variety of TC-related issues, including the regulatory status of surface impoundments managing newly regulated TC waste. The third surface impoundment scenario discussed in the notice is clearly applicable to both of Ms. Floeck's situations (Scenarios #1 and #2). That is, a TC waste is generated from non-hazardous wastewater on or after the TC effective date. This could occur where hazardous constituents in wastewater become concentrated, or if a new TC sludge is formed by settling. Once the TC waste is generated and stored or disposed in the unit, the unit is subject to Subtitle C regulations. This clarification also confirms your stated reasoning as to why the sludge in the surface impoundment would be covered by the TC.

I hope this response clarifies the issues you raised. As noted previously, I encourage you to contact the appropriate State and local regulatory agencies for additional assistance or clarification. If you or Ms. Floeck have further questions regarding the TC rule, please contact Daryl Moore at FTS 475-8551 or (202) 475-8551.